

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 JOSEPH J. FLOWERS,

No. C 08-04179 CW (PR)

12 Plaintiff,

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION AS
MOOT

13 v.

14 ALAMEDA COUNTY SHERIFF, et al.,

Defendants.

15 _____ /
16 Before the Court is Plaintiff's motion for reconsideration of
the Court's Order denying appointment of counsel.

17 Rule 60(b) provides for reconsideration only upon a showing
18 of: (1) mistake, inadvertence, surprise or excusable neglect;
19 (2) newly discovered evidence which by due diligence could not have
20 been discovered before the court's decision; (3) fraud by the
21 adverse party; (4) a void judgment; (5) a satisfied or discharged
22 judgment; or (6) any other reason justifying relief. See Fed. R.
23 Civ. P. 60(b). Subparagraph (6) requires a showing that the
24 grounds justifying relief are extraordinary. Mere dissatisfaction
25 with the Court's order, or belief that the Court is wrong in its
26 decision, are not grounds for relief under subparagraph (6) or any
27 other provision of Rule 60(b). "[T]he major grounds that justify

1 reconsideration involve an intervening change of controlling law,
2 the availability of new evidence, or the need to correct a clear
3 error or prevent manifest injustice.'" Pyramid Lake Paiute Tribe
4 of Indians v. Hodel, 882 F.2d 364, 369 n.5 (9th Cir. 1989) (quoting
5 United States v. Desert Gold Mining Co., 433 F.2d 713, 715 (9th
6 Cir. 1970)).

7 Plaintiff presents no grounds that warrant reconsideration.
8 As explained in the Court's Order denying appointment of counsel,
9 there is no constitutional right to counsel in a civil case unless
10 an indigent litigant may lose his physical liberty if he loses the
11 litigation. See Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 25
12 (1981); Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997) (no
13 constitutional right to counsel in § 1983 action), withdrawn in
14 part on other grounds on reh'g en banc, 154 F.3d 952 (9th Cir.
15 1998) (en banc). The court may ask counsel to represent an
16 indigent litigant under 28 U.S.C. § 1915 only in "exceptional
17 circumstances," the determination of which requires an evaluation
18 of both (1) the likelihood of success on the merits, and (2) the
19 ability of the plaintiff to articulate his claims pro se in light
20 of the complexity of the legal issues involved. See id. at 1525;
21 Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wilborn v.
22 Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). Both of these
23 factors must be viewed together before reaching a decision on a
24 request for counsel under § 1915. See id. At present, the Court
25 is unable to assess whether exceptional circumstances exist which
26 would warrant seeking volunteer counsel to accept a pro bono
27 appointment. The proceedings are at an early stage and it is
28 premature for the Court to determine Plaintiff's likelihood of

1 success on the merits. Accordingly, Plaintiff's motion for
2 reconsideration is DENIED as moot. The Court will consider
3 appointment of counsel later in the proceedings, after Defendants
4 have filed their dispositive motion and the Court has a better
5 understanding of the procedural and substantive matters at issue.
6 Therefore, Plaintiff may file a renewed motion for the appointment
7 of counsel after Defendants' dispositive motion has been filed. If
8 the Court decides that appointment of counsel is warranted at that
9 time, it will seek volunteer counsel to agree to represent
10 Plaintiff pro bono.

11 This Order terminates Docket no. 60.

12 IT IS SO ORDERED.

13 Dated: 3/31/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH J. FLOWERS,

Plaintiff,

Case Number: CV08-04179 CW

V.

ALAMEDA COUNTY SHERIFF et al,

Defendant.

CERTIFICATE OF SERVICE

7 ALAMEDA COUNTY SHERIFF et al,
8 Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

11 That on March 31, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
receptacle located in the Clerk's office.

15 Joseph J. Flowers F82065
DVI Prison
P.O. Box 600
Tracy, CA 95378

Dated: March 31, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk